

SAMPLE AGREEMENT LANGUAGE

City of Seattle

(Enter Name of Department)

CONSULTANT AGREEMENT

Title: (Insert brief descriptive title for the consultant service)

AGREEMENT NUMBER: (Enter Agreement Number)

This Agreement is made and entered into by and between the City of Seattle (“the City”), a Washington municipal corporation, through its Office of Labor Standards, as represented by its Director; and (insert legal name and address of Consultant) (“Consultant”), a (insert appropriate type of business: e.g. partnership, sole proprietorship, limited liability company, corporation, public benefit nonprofit) of the State of (insert state in which the corporation is chartered) and authorized to do business in the State of Washington.

Recitals:

[To be completed.]

The Consultant was selected through a Request for Proposal. In consideration of the terms, conditions, covenants and performance of the Scope of Work contained herein, the City and Consultant mutually agree as follows:

1. TERM OF AGREEMENT.

The term of this Agreement begins when fully executed by all parties, and ends on December 31, 2022, unless amended by written agreement or terminated earlier under the termination provisions.

2. COMMENCEMENT OF PERFORMANCE; COMPLETION.

Performance of the Scope of Work, as outlined in the Scope of Work section, will begin on or immediately following the date on which SMC Chapter 14.32 goes into effect. Ordinance 126235 provides that SMC Chapter 14.32 takes effect on (i) July 1, 2021, if the City Budget Office has certified to the City Clerk that the City has collected sufficient revenues to fund implementation of the Transportation Network Company Driver Deactivation Ordinance, or (ii) if the City Budget Office has not filed the certification by July 1, 2021, then 60 days following the date on which such certification is filed.

The Consultant shall begin the work outlined in the “Scope of Work” (“Work”) upon receipt of written notice to proceed from the City. The City will acknowledge in writing when the Work is complete. Time limits established under this Agreement shall not be extended because of delays for which the Consultant is responsible, but may be extended by the City, in writing, for the City’s convenience or conditions beyond the Consultant’s control.

3. SCOPE OF WORK.

The purpose of this contract is to assist the Seattle Office of Labor Standards (“Department”) with fulfilling the obligations set forth in the Transportation Network Company Driver Deactivation Ordinance, Seattle Municipal Code (SMC) 14.32. SMC 14.32.060 specifies that the Department “may contract with a Driver Resolution Center to provide driver resolution services. Those services include, but are not limited to: (1) Consultation and/or direct representation for TNC drivers facing deactivation; (2) Other support for TNC drivers to ensure compliance with applicable labor standards and/or to support their ability to perform TNC services; and (3) outreach and education to TNC drivers regarding their rights under SMC 14.32 and other applicable federal, state, and local laws and regulations.”

[The Scope of Work would be listed here.]

The Work is subject to City review and approval. The Consultant shall confer with the City periodically, and prepare and present information and materials (e.g. detailed outline of completed Work) requested by the City to determine the adequacy of the Work or Consultant's progress.

The Consultant agrees to comply with the requirements set forth set forth in Seattle Municipal Code 14.32, Seattle Human Rights Rules Chapter 200, and the reasonable requirements and requests made by the neutral arbitrator(s) with whom the City will enter into an agreement to conduct arbitration proceedings to hear deactivation challenges as set forth in Seattle Municipal Code 14.32.

3.1 QUARTERLY PERFORMANCE AND FUNDING REVIEW AND MEETING

The Consultant agrees to meet once per quarter (on a 3-month basis) with the Department to evaluate program performance and review budget and scope of work deliverables, and to accommodate changes in available funding to increase or decrease workplan activities, if required. If necessary, an agreement between the Department and Consultant may be reached to adjust strategies and deliverables as needed for subsequent quarters to achieve the goals as defined in the Scope of Work and funding availability. Any adjustments made must still meet the terms of Consultant's contract and work outcomes associated with the negotiated Scope of Work. These reviews and meetings will be scheduled by the Department.

OLS reserves the right to schedule meetings as necessary.

3.2 TRAININGS BY OLS

Consultant's key leadership, managerial staff, and staff responsible for performing the Scope of Work are required to attend trainings on Seattle Labor Standards, which will be delivered by OLS. Specifically, the trainings will cover obligations under Paid Sick and Safe Time Ordinance, Fair Chance Employment Ordinance, Minimum Wage Ordinance, Wage Theft Ordinance, Commuter Benefits, as well as the any ordinances related to gig workers or TNC Drivers. These trainings are designed to ensure that Consultant's organizational policies, payroll and practices are compliant with Seattle Labor Standards and that the Consultant is equipped with the Department's understanding of requirements under those laws. If the Consultant cannot attend the Consultant is required to contact the OLS Community Engagement Specialist. Consultant may request additional trainings as needed.

4. EXPANSION FOR NEW WORK.

This Agreement scope may be expanded for new work. Any expansion for New Work (work not specified within the original Scope of Work Section of this Agreement, and/or not specified in the original RFP as intended work for the Agreement) must comply with all the following limitations and requirements: (a) the New Work is not reasonable to solicit separately; (b) the New Work is for reasonable purpose; (c) the New Work was not reasonably known either the City or Consultant at time of contract or else was mentioned as a possibility in the solicitation (such as future phases of work, or a change in law); (d) the New Work is not significant enough to be reasonably regarded as an independent body of work; (e) the New Work would not have attracted a different field of competition; and (f) the change does not vary the essential identified or main purposes of the Agreement. The City may make exceptions for immaterial changes, emergency or sole source conditions, or other situations required in City opinion. Certain changes are not New Work subject to these limitations, such as additional phases of Work anticipated at the time of solicitation, time extensions, Work Orders issued on an On-Call contract, and similar. New Work must be mutually agreed and issued by the City through written Addenda. New Work performed before an authorizing Amendment may not be eligible for payment.

5. INTERLOCAL COOPERATION ACT. RESERVED

6. PAYMENT.

[Payment amount, timing, and conditions would be outlined here].

Consultant acknowledges and agrees that the amount available for 2021 and 2022 is contingent on City Budget Office's certification of the availability of sufficient revenue and upon appropriation of funds by City Council in the 2021 and 2022 Adopted Budgets. Accordingly, the payment identified above is based on currently anticipated funding availability, and remains subject to change in all respects.

6.1 PAYMENT PROCEDURES.

The Consultant may submit invoices to the City as frequently as once per month during progress of work, for partial payment for work completed to date. Payment shall be made by the City to the Consultant upon the City's receipt of a properly prepared invoice containing the information listed below.

Deliver all invoices and invoice/billing notices under this Agreement to:

If to the City:	If to the Consultant:
City Contact Email / Phone DEPARTMENT PO Box Seattle WA 98124- XXXX	Firm Contact Firm Name Email / Phone Firm Address

See attached checklist for further instructions.

Invoices must clearly display the following (sub-consultants' invoices must also include this information):
<ul style="list-style-type: none">• Invoice Date and Invoice Number• City Project Manager Name: (Please do not put PM's name in the address)• Department Contract No.• Contract Title:• Period covered by the invoice• Task # and title• Employee's name and classification• Employee's all-inclusive hourly rate and # of hours worked• Total labor costs per task• Itemization of direct, non-salary costs (per task, if so allocated)• The following Sub-Consultant payment information will be provided (attach Sub- Consultant invoices as backup):<ul style="list-style-type: none">○ Amount Paid to all Sub-Consultants for the invoice period (list separate totals for each Sub-Consultant).○ Cumulative To-Date amount paid to all Sub-Consultants (list separate totals for each Sub-Consultant).• Cumulative costs per task and for the total project

6.2 PROMPT PAY.

Definitions

- A. An invoice is considered received when it is date-stamped as received by the office of the recipient who is designated within this contract. If the invoice is not date-stamped or otherwise marked as received by a department, the date of the invoice will be considered the date the invoice is received.
- B. A payment is considered made on the day it is mailed or is available.

- C. Disputed items include, but are not restricted to, improperly prepared invoices, lack of appropriate supporting documentation, unapproved staff or staff rates on the invoice, and unsatisfactory work product or services.

Prompt Payment to Consultant

- A. Timely Payment: Except as provided otherwise herein, payment for an invoice will be issued and mailed to the Consultant within thirty (30) calendar days of receipt of the invoice.
- B. Disputed Items: The City may withhold payment for disputed items. The City will promptly notify the Consultant in writing, outlining the disputed items, the amount withheld and actions the Consultant must take to resolve the disputed items. The City default is to delay payment until a revised invoice is submitted and approved. However, the Consultant may request partial payment for the approved amounts, if the unapproved amount represents a small share of the total invoice. The City shall pay the revised invoice within thirty (30) calendar days of receipt.
- C. Legal Fees: In any action brought to collect interest due under this Section, the prevailing party is entitled to an award of reasonable attorney fees.

Prompt Payment to Subconsultants

- A. Cut-Off Date: Except as provided otherwise herein, payment for an invoice will be made to a subconsultant within thirty (30) calendar days of receipt by the Consultant. The Consultant may establish a monthly cut-off date of (*to be established by Prime*) that subconsultants must submit an invoice in order to assure 30-day payment.
- B. Disputed Items: The Consultant may withhold payment for disputed items. The Consultant will promptly notify the subconsultant in writing, outlining disputed items, the amount withheld and actions the subconsultant must take to resolve the disputed item(s). Such withheld amounts are limited only to items in dispute. The subconsultant can request partial payment for the approved amounts, or that the Consultant delay their entire payment until a revised invoice is submitted to and accepted by the Consultant. The Consultant shall pay the revised invoice within thirty (30) calendar days of receipt.
- C. Flow-Down Clauses: The Consultant shall require this provision in each subcontract of any tier.

6.3 SUBCONSULTANT PAYMENTS REPORTING REQUIREMENTS.

The Consultant shall report payments made to each Subconsultant through B2GNow at:
<https://seattleconsulting.diversitycompliance.com/>

- 1) The Consultant shall report the first Subconsultant payment report no later than the 15th of the first month following issuance of the first payment made by the City to the Consultant, unless otherwise specified by the department.
- 2) Subsequent monthly Subconsultant payment reports shall be submitted by the 15th day of every month thereafter.
- 3) The last Subconsultant payment report shall be marked as "Final" in B2GNow and shall be submitted no later than 30 Days after the expiration of the Agreement.
- 4) The Consultant shall require each Subconsultant to verify each payment through B2GNow.

- 5) The Consultant is responsible for ensuring that all Subconsultants working on the contract (WMBE and Non-WMBE) entered in the B2GNow System for payment reporting purposes.
- 6) The Consultant shall require each Subconsultant to register on the City's Online Business Directory prior to completing the first online report. <https://web6.seattle.gov/FAS/OBD/Logon/Logon.aspx>.
- 7) The Consultant shall also require its Subconsultants to report payments made to any lower tier Subconsultants, if any, in the same manner as specified herein.
- 8) The City reserves the right to withhold payments from the Consultant for non-compliance with this section.

The Consultant may contact (insert department name contact and phone number) or the City Purchasing and Contracting Services (CPCS), City of Seattle, Department of Finance and Administrative Services at (206) 684-0444 for technical assistance in submitting the required reports.

7. TAXES, FEES AND LICENSES.

- A. The Consultant shall pay and maintain in current status, all necessary licenses, fees, assessments, permit charges, etc. It is the Consultant's sole responsibility to monitor and determine any changes or the enactment of any subsequent requirements for said fees, assessments, or changes and to immediately comply.
- B. Where required by state statute, ordinance or regulation, the Consultant shall pay and maintain in current status all taxes necessary for performance. The Consultant shall not charge the City for federal excise taxes. The City will furnish Consultant an exemption certificate where appropriate.
- C. As authorized by SMC, the Director of Finance and Administrative Services may withhold payment pending satisfactory resolution of unpaid taxes and fees due the City.

8. ADDRESSES FOR NOTICES AND DELIVERABLE MATERIALS.

Deliver all official notices and deliverable materials under this Agreement to:

If to the City:	If to the Consultant:
City contact email/phone DEPARTMENT PO Box Seattle WA 98124- XXXX	Firm Contact FirmName email/phone Firm Address

9. EQUAL BENEFITS.

This provision applies to all contracts valued at \$54,000 or above, including amendments. The Consultant shall comply with SMC Ch. 20.45 and Equal Benefit Program Rules, which require the Consultant to provide the same or equivalent benefits ("equal benefits") to domestic partners of employees as the Consultant provides to spouses of employees. At the City's request, the Consultant shall provide information and verification of the Consultant's compliance. Any violation of this Section is material breach, for which the City may exercise enforcement actions or remedies defined in SMC Chapter 20.45.

10. SOCIAL EQUITY REQUIREMENTS.

- A. Non-discrimination: The Consultant shall not discriminate against any employee or applicant for employment because of race, color, age, sex, marital status, sexual orientation, gender identity, political ideology, creed, religion, ancestry, national origin, honorably discharged veteran or military status or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. The Consultant shall affirmatively try to ensure applicants are employed, and employees are treated equally during

employment, without regard to race, color, age, sex, marital status, sexual orientation, gender identify, political ideology, creed, religion, ancestry, national origin, honorably discharged veteran or military status or the presence of any sensory, mental or physical handicap. Such efforts include, but are not limited to employment, upgrading, demotion, transfer, recruitment, layoff, termination, rates of pay or other compensation, and training.

- B. WMBE Inclusion: The Consultant shall seek inclusion of woman and minority businesses (WMBEs) for subcontracting. A WMBE is one that self-identifies to be at least 51% owned by a woman and/or minority. Such firms do not have to be certified by the State of Washington but must be registered in the City Online Business Directory.

Inclusion responsibilities shall include those commitments agreed upon between the City and the Consultant as a result of the WMBE Inclusion Plan submitted with the Consultant Proposal and as agreed upon by the City. The Inclusion Plan is incorporated herein by this reference as an Attachment.

- C. Paid Sick Time and Safe Time Ordinance: The Consultant shall be aware that the City has a Paid Sick Time and Safe Time ordinance that requires employers with one or more employees who work in Seattle with accrued paid sick and paid safe time for use when an employee or a family member needs time off from work due to illness or a critical safety issue. The ordinance applies to employers, regardless of where they are located. This is in addition and additive to benefits a worker receives under prevailing wages per WAC 296-127-014(4). City contract specialists may audit payroll records or interview workers as needed to ensure compliance to the ordinance. Please see <http://www.seattle.gov/laborstandards>, or you may call the Office of Labor Standards at 206-256-5297.
- D. Other Labor Standards Requirements: The Consultant shall comply with the City's other labor standards, including but not limited to the Minimum Wage Ordinance, SMC 14.19, the Wage Theft Ordinance, SMC 14.20, Fair Chance Employment Ordinance, SMC 14.17, and Commuter Benefits Ordinance, SMC 14.30. To find out more about Seattle's labor standards, including those not listed here, please see <http://www.seattle.gov/laborstandards>, or you may call the Office of Labor Standards at 206-256-5297.
- E. Personnel Conduct: Consultant will ensure that its respective employees, agents, and subcontractors conduct themselves in a courteous and expeditious manner. The use of abusive, indecent, offensive, coarse, or insulting language, or any form of harassment is prohibited and will not be tolerated. Consultant's employees, agents, and subcontractors will be competent and hold appropriate licenses and endorsements. The City may require the removal of any employee or subcontractor of Consultant for misconduct or incompetent or negligent performance. Such persons will not be allowed to perform services under this Agreement without the written consent of the City.

11. PROTECTION OF PROPERTY

Consultant is responsible for protecting its person and property at all times, including but not limited to supplies and equipment to perform services hereunder; Consultant releases and agrees to hold the City harmless from liability for losses or damages or any kind sustained by Consultant in performing the services required hereunder.

12. INDEMNIFICATION.

Consultant shall defend, indemnify, and hold the City harmless from and against all claims, demands, losses, damages or costs, including but not limited to damages arising out of bodily injury or death to persons and damage to property, caused by or resulting from:

- the sole negligence or willful misconduct of Consultant, its officers, employees, agents or subconsultants;
- the concurrent negligence of Consultant, its officers, employees, agents or subconsultants but only to the extent of the negligence of Consultant, its officers, employees, agents or subconsultants;
- the negligent performance or non-performance of the contract by the Consultant; or
- the use of any design, process, or equipment that constitutes an infringement of any patent in effect, or violates any other intellectual proprietary interest, including copyright, trademark, and trade secret.

Consultant waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the City and its officials, agents or employees.

13. INSURANCE.

Insurance certification and additional insured endorsement policy must be submitted to the City. See attached "INSURANCE REQUIREMENTS AND TRANSMITTAL FORM."

14. AUDIT.

Upon request, the Consultant shall permit the City and any other governmental agency ("Agency") involved in funding of the Work, to inspect and audit all pertinent books and records. This includes work of the Consultant, any subconsultant, or any other person or entity that performed connected or related Work. Such books and records shall be made available at any and all times deemed necessary by the Agency, including up to six years after final payment or release of withheld amounts. Such inspection and audit shall occur in King County, Washington or other reasonable locations that the Agency selects. The Consultant shall permit the Agency to copy books and records. The Consultant shall ensure that inspection, audit and copying rights of the Agency is a condition of any subcontract, agreement or other arrangement under which any other person or entity may perform work under this Agreement.

15. INDEPENDENT CONSULTANT.

- A. The Consultant is an independent Consultant. This Agreement does not intend the Consultant to act as a City employee. The City has neither direct nor immediate control over the Consultant nor the right to control the manner or means by which the Consultant works. Neither the Consultant nor any Consultant employee shall be an employee of the City. This Agreement prohibits the Consultant to act as an agent or legal representative of the City. The Consultant is not granted express or implied rights or authority to assume or create any obligation or responsibility for or in the name of the City, or to bind the City. The City is not liable for or obligated to pay sick leave, vacation pay, or any other benefit of employment, nor to pay social security or other tax that may arise from employment. The Consultant shall pay all income and other taxes as due. The Consultant may perform work for other parties; the City is not the exclusive user of the services that the Consultant provides.
- B. If the City needs the Consultant to Work on City premises and/or with City equipment, the City may provide the necessary premises and equipment. Such premises and equipment are exclusively for the Work and not to be used for any other purpose.
- C. If the Consultant works on the City premises using City equipment, the Consultant remains an independent Consultant. The Consultant will notify the City Project Manager if s/he or any other Workers are within 90 days of a consecutive 36-month placement on City property. If the City determines using City premises or equipment is unnecessary to complete the Work, the Consultant will be required to work from its own office space or in the field. The City may negotiate a reduction in Consultant fees or charge a rental fee based on the actual costs to the City, for City premises or equipment.

16. KEY PERSONS.

The Consultant shall not transfer or reassign any individual designated in this Agreement as essential to the Work, without the express written consent of the City, which shall not be unreasonably withheld. If any such individual leaves the Consultant's employment, the Consultant shall present to the City one or more individuals with greater or equal qualifications as a replacement, subject to the City's approval, which shall not be unreasonably withheld. The City's approval does not release the Consultant from its obligations under this Agreement.

17. ASSIGNMENT AND SUBCONTRACTING.

The Consultant shall not assign or subcontract its obligations under this Agreement without the City's written consent, which may be granted or withheld in the City's sole discretion. The Consultant shall ensure that all subconsultants comply with all obligations and requirements applicable to the subcontracted work. The City's consent to any assignment or subcontract does not release the consultant from liability or any obligation within this Agreement, whether before or after City consent, assignment, or subcontract.

18. CITY ETHICS CODE (SMC 4.16.010 TO .105).

- A. The Consultant shall promptly notify the City in writing of any person expected to be a Consultant Worker (including any Consultant employee, subconsultant, principal, or owner) and was a former City officer or employee within the past twelve (12) months.

- B. The Consultant shall ensure compliance with the City Ethics Code by any Consultant Worker when the Work or matter related to the Work is performed by a Consultant Worker who has been a City officer or employee within the past two years.
- C. The Consultant shall provide written notice to the City of any Consultant worker who shall or is expected to perform over 1,000 hours of contract work for the City within a rolling 12-month period. Such hours include those performed for the Consultant and other hours that the worker performed for the City under any other contract. Such workers are subject to the City Ethics Code, SMC 4.16. The Consultant shall advise their Consultant Workers.
- D. The Consultant shall not directly or indirectly offer anything of value (such as retainers, loans, entertainment, favors, gifts, tickets, trips, favors, bonuses, donations, special discounts, work or meals) to any City employee, volunteer or official that is intended, or may appear to a reasonable person to be intended, to obtain or give special consideration to the Consultant. Promotional items worth less than \$25 may be distributed by the Consultant to City employees if the Consultant uses the items as routine and standard promotional materials. Any violation of this provision may cause termination of this Agreement. Nothing in this Agreement prohibits donations to campaigns for election to City office, so long as the donation is disclosed as required by the election campaign disclosure laws of the City and of the State.
- E. Campaign Contributions (Initiative Measure No. 122): Elected officials and candidates are prohibited from accepting or soliciting campaign contributions from anyone having at least \$250,000 in contracts with the City in the last two years or who has paid at least \$5,000 in the last 12 months to lobby the City. Please contact Polly Grow at polly.grow@seattle.gov for more information about the measure, or call the Ethics Director with questions at 206-615-1248.

19. NO CONFLICT OF INTEREST.

The Consultant confirms that the Consultant or workers have no business interest or a close family relationship with any City officer or employee who was or will be involved in the consultant selection, negotiation, drafting, signing, administration or evaluation of the Consultant’s work. As used in this section, the term Consultant includes any worker of the Consultant who was, is, or will be, involved in negotiation, drafting, signing, administration or performance of the Agreement. The term close family relationship refers to: spouse or domestic partner, any dependent parent, parent-in-law, child, son-in-law, daughter-in-law; or any parent, parent-in-law, sibling, uncle, aunt, cousin, niece or nephew residing in the household of a City officer or employee described above.

20. ERRORS AND OMISSIONS, CORRECTIONS.

Consultant is responsible for professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by or on the behalf of the Consultant under this Agreement. Consultant, without additional compensation, shall correct or revise errors or mistakes in the designs, drawings, specifications, and/or other consultant services immediately upon notification by the City. The obligation provided for in this Section regarding acts or omissions resulting from this Agreement survives Agreement termination or expiration.

21. INTELLECTUAL PROPERTY RIGHTS.

- A. Copyrights. The Consultant shall retain the copyright (including the right of reuse) to all materials and documents prepared by the Consultant for the Work, whether or not the Work is completed. The Consultant grants to the City a non-exclusive, irrevocable, unlimited, royalty-free license to use copy and distribute every document and all the materials prepared by the Consultant for the City under this Agreement. If requested by the City, a copy of all drawings, prints, plans, field notes, reports, documents, files, input materials, output materials, the media upon which they are located (including cards, tapes, discs, and other storage facilities), software program or packages (including source code or codes, object codes, upgrades, revisions, modifications, and any related materials and/or any other related documents or materials developed solely for and paid for by the City to perform the Work, shall be promptly delivered to the City.
- B. Patents: The Consultant assigns to the City all rights in any invention, improvement, or discovery, with all related information, including but not limited to designs, specifications, data, patent rights and findings developed with the performance of the Agreement or any subcontract. Notwithstanding the above, the Consultant does not convey to the City, nor does the City obtain, any right to any document or material utilized by the Consultant created or produced separate from the Agreement or was pre-existing material (not already owned by the City), provided that the Consultant has identified in writing such material as pre-existing prior to commencement of the Work. If pre-existing materials are incorporated in the work, the Consultant grants the

City an irrevocable, non-exclusive right and/or license to use, execute, reproduce, display and transfer the pre-existing material, but only as an inseparable part of the work.

- C. The City may make and retain copies of such documents for its information and reference with their use on the project. The Consultant does not represent or warrant that such documents are suitable for reuse by the City or others, on extensions of the project or on any other project.

22. NON-DISCLOSURE AGREEMENT

A Signed Non-Disclosure Agreement is not required.

23. PROPRIETARY AND CONFIDENTIAL INFORMATION.

The State of Washington's Public Records Act (Release/Disclosure of Public Records) Under Washington State Law (reference RCW Chapter 42.56, the Public Records Act) all materials received or created by the City of Seattle are considered public records. These records include but are not limited to bid or proposal submittals, agreement documents, contract work product, or other bid material.

The State of Washington's Public Records Act requires that public records must be promptly disclosed by the City upon request unless that RCW or another Washington State statute specifically exempts records from disclosure. Exemptions are narrow and explicit and are listed in Washington State Law (Reference RCW 42.56 and RCW 19.108).

As mentioned above, all City of Seattle offices ("the City") are required to promptly make public records available upon request. However, under Washington State Law some records or portions of records may be considered legally exempt from disclosure. A list and description of records identified as exempt by the Public Records Act can be found in RCW 42.56 and RCW 19.108.

If the City receives a public disclosure request for any records or parts of records that Contractor has properly and specifically listed on the City Non-Disclosure Request Form (Form) submitted with Contractor's bid/proposal, or records that have been specifically identified in this contract, the City will notify Contractor in writing of the request and will postpone disclosure. While it is not a legal obligation, the City, as a courtesy, will allow Contractor up to ten business days to obtain and serve the City with a court injunction to prevent the City from releasing the records (reference RCW 42.56.540). If you fail to obtain a Court order and serve the City within the ten days, the City may release the documents.

The City will not assert an exemption from disclosure on Contractor's behalf. If Contractor believes that its records are exempt from disclosure, Contractor is obligated to seek an injunction under RCW 42.56.540. Contractor acknowledges that the City will have no obligation or liability to Contractor if the records are disclosed.

24. DISPUTES.

Any dispute or misunderstanding that may arise under this Agreement, concerning the Consultant's performance, shall first be through negotiations, if possible, between the Consultant's Project Manager and the City's Project Manager. It shall be referred to the Director and the Consultant's senior executive(s). If such officials do not agree upon a decision within a reasonable period of time, either party may decline or discontinue such discussions and may then pursue the legal means to resolve such disputes, including but not limited to alternative dispute resolution processes. Nothing in this dispute process shall mitigate the rights of the City to terminate the contract.

Notwithstanding all of the above, if the City believes in good faith that some portion of the Work has not been completed satisfactorily, the City may require the Consultant to correct such work prior to the City payment. The City will provide to the Consultant an explanation of the concern and the remedy that the City expects. The City may withhold from any payment otherwise due, an amount that the City in good faith finds to be under dispute, or if the Consultant provides no sufficient remedy, the City may retain the amount equal to the cost to the City for otherwise correcting or remedying the work not properly completed.

25. TERMINATION.

- A. For Cause: The City may terminate this Agreement if the Consultant is in material breach of this Agreement, and such breach has not been corrected to the City's reasonable satisfaction in a timely manner.
- B. For Reasons Beyond Control of the Parties: Either party may terminate this Agreement without recourse by the other where performance is rendered impossible or impracticable for reasons beyond such party's reasonable

control, such as, but not limited to, an act of nature, war or warlike operation, civil commotion, riot, labor dispute including strike, walkout or lockout, except labor disputes involving the Consultant's own employees, sabotage, or superior governmental regulation or control.

- C. For City's Convenience: The City may terminate this Agreement without cause and including the City's convenience, upon written notice to the Consultant.
- D. Notice: Notice of termination under this Section shall be given by the party terminating this Agreement to the other, not fewer than five (5) business days prior to the effective date of termination.
- E. Actions upon Termination: if termination occurs and is not the fault of the Consultant, the Consultant shall be paid for the services properly performed prior to termination, with any reimbursable expenses then due, but such compensation shall not exceed the maximum compensation to be paid under the Agreement. The Consultant agrees this payment shall fully and adequately compensate the Consultant and all subconsultants for all profits, costs, expenses, losses, liabilities, damages, taxes and charges of any kind (whether foreseen or unforeseen) attributable to the termination of this Agreement.
- F. Upon termination, the Consultant shall provide the City with the most current design documents, contract documents, writings and other products the Consultant has produced to termination, along with copies of all project-related correspondence and similar items. The City shall have the same rights to use these materials as if termination had not occurred.

26. CONSULTANT PERFORMANCE EVALUATION.

The Consultant's performance will be evaluated by the City at the conclusion of the contract. The Evaluation template can be viewed <http://www.seattle.gov/contracting/docs/ccPE.doc>.

27. DEBARMENT.

Federal Debarment: The Consultant shall immediately notify the City of any suspension or debarment or other action that excludes the Consultant or any subconsultant from participation in Federal contracts. Consultant shall verify all subconsultants intended and/or used by the Consultant for performance of City Work are in good standing and are not debarred, suspended or otherwise ineligible by the Federal Government. Debarment shall be verified at <https://www.sam.gov>. Consultant shall keep proof of such verification of subconsultant debarment status within the Consultant records.

City of Seattle Debarment: Under SMC Chapter 20.70, the Director of City Purchasing and Contracting Services (CPCS), as hereby delegated by the Director of Finance and Administrative Services, may debar and prevent a Consultant from contracting or subcontracting with the City for up to five years after determining the Consultant:

- A. Received overall performance evaluations of deficient, inadequate, or substandard performance on three or more City contracts;
- B. Failed to comply with City ordinances or contract terms, including but not limited to, ordinance or contract terms related to woman and minority business utilization, discrimination, equal benefits, or other state, local or federal non-discrimination laws;
- C. Abandoned, surrendered, or failed to complete or to perform work on or for a City contract;
- D. Failed to comply with contract provisions, including but not limited to quality of workmanship, timeliness of performance, and safety standards;
- E. Submitted false or intentionally misleading documents, reports, invoices, or other statements to the City in connection with a contract;
- F. Colluded with another firm to restrain competition;
- G. Committed fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a contract for the City or any other government entity;
- H. Failed to cooperate in a City debarment investigation.

The CPCS Director or designee may issue an Order of Debarment under the SMC 20.70.050. Rights and remedies of the City under these provisions are besides other rights and remedies provided by law or under the Agreement.

28. MISCELLANEOUS PROVISIONS.

- A. Amendments: No modification of this Agreement shall be effective unless in writing and signed by an authorized representative of each of the parties hereto.

- B. Background Checks and Immigrant Status: The City may require background checks for some or all of the employees that may perform work under this Agreement. The City reserves the right to require such background checks at any time. The City has strict policies regarding the use of background checks, criminal checks, immigrant status, and/or religious affiliation for contract workers. The policies are incorporated into the contract and available for viewing on-line at <http://www.seattle.gov/purchasing-and-contracting/social-equity/background-checks>.
- C. Notification Requirements for Federal Immigration Enforcement Activities: Prior to responding to any requests from an employee or agent of any federal immigration agency including the Immigration and Customs Enforcement (ICE), the U.S. Department of Homeland Security (DHS), Homeland Security Investigations (HSI), Enforcement Removal Operations (ERO), Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (USCIS) regarding your City contract, Consultants shall notify the Project Manager immediately.

Such requests include, but are not limited to:

- a. requests for access to non-public areas in City buildings and venues (i.e., areas not open to the public such as staff work areas that require card key access and other areas designated as “private” or “employee only”); or
- b. requests for data or information (written or oral) about workers engaged in the work of this contract or City employees.

No access or information shall be provided without prior review and consent of the City. The Consultant shall request the ICE authority to wait until the Project Manager is able to verify the credentials and authority of the ICE agent and will direct the Consultant on how to proceed.

- D. Binding Agreement: This Agreement shall not be binding until signed by both parties. The provisions, covenants and conditions in this Agreement shall bind the parties, their legal heirs, representatives, successors and assigns.
- E. Americans with Disabilities Act (ADA): RESERVED
- F. Federal, State, and Local Compliance: The Consultant, at no expense to the City, shall comply with all laws of the United States and Washington, the Charter and ordinances of the City of Seattle; and rules, regulations, orders and directives of their administrative agencies and officers, including, but not limited to, Seattle Municipal Code Chapter 14.04 (Fair Employment Practices), Chapter 14.06 (Unfair Public Accommodations Practices), Chapter 14.10 (Fair Contracting Practices), and Chapter 20.45 (City Contracts – Non-Discrimination in Benefits). Without limiting the generality of this paragraph, the Consultant shall comply with the requirements of this Section.
- G. Violations of Law: Any violation of the requirements in Section 28.F shall be a material breach of contract for which the Consultant may be subject to damages, sanctions, or other remedies as provided for under this Agreement or under applicable law. In the event Consultant is in violation of Section 28.F, Consultant may also be subject to debarment from City contracting activities in accordance with Section 27.
- H. Venue: This Agreement shall be construed and interpreted under the laws of Washington. The venue of any action brought shall be in the Superior Court of King County.
- I. Remedies Cumulative: Rights under this Agreement are cumulative and nonexclusive of any other remedy of law or in equity.
- J. Captions: The titles of sections or subsections are for convenience only and do not define or limit the contents.

- Exhibit **XX** - Scope of Work (Insert Exhibit if applicable)
- Invoice Payment Package
- Insurance Transmittal form – *proof of certification and blanket/additional insured endorsement wording coverage for the City of Seattle should be submitted with your signed Agreement.*

Sample Invoice Review Checklist

The City intends to pay you promptly. Below is a checklist to ensure your payment will be processed quickly. Provide this to the best person in your company for ensuring invoice quality control.

Send the invoices to the correct address:

[City Department Address/Invoice Recipient will be inserted here]

Validate that the time for services performed is within the Contract Begin Date and Contract End Date.

Ensure invoice items have not been previously billed or paid, given the time for which services were performed.

Ensure enough money remains on the contract including amendments, to pay the invoice.

Ensure the billing amount is accurate for the work performed.

Ensure WMBE utilization is provided to the City and/or entered into the City on-line system. \

Ensure the invoice number is uniquely numbered and that the invoice is complete.

Ensure back-up documentation is adequate and complete.

Definitions

- Services- Deliverables or work performed by the consultant including analysis, advice, recommendations, report preparation, design development, and other specialized services.
- Direct Charges- Non-Salary expenses that are necessary and directly applicable to the work required by the contract, for example, Travel & Per Diem, Reproduction Expenses, Office Supplies, and Sub-consultants.
- Contract End Date: Day contract expires.

WMBE UTILIZATION

	A	B	C = F / Total F	D	E	F	G = E + F
Consultant	WMBE Goal	Consultant Type	LTD WMBE %	Contract Budget	Prior LTD Costs	This Invoice	LTD Costs
Prime							
Sub-consultant A	%		#DIV/0!				\$0
Sub-consultant B	%		#DIV/0!				\$0
Sub-consultant C	%		#DIV/0!				\$0
WMBE Sub-Total	0%		#DIV/0!		\$0	\$0	\$0
Non-WMBE Sub-Total							\$0
Total				\$0	\$0	\$0	\$0

*Note: If Prime is WMBE, denote WMBE Goal in Prime row.

#DIV/0!

A - WMBE Goal - aspirational WMBE goals reflected in contract inclusion plan

B -Consultant Type- P+ Prime;

D - total amount of contract, including amendments

S=Subconsultant

Inclusion Plan Progress Description (Please comment on any deviation from Inclusion Plan goals):